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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: Texas Service Center Date: JAN 24 200

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC), and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed this application for TPS on December 11, 2002. On February 27, 2003, the applicant was requested to submit additional evidence establishing his eligibility for late registration. The applicant was also requested to submit evidence establishing his qualifying residence and physical presence in the United States. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on August 28, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the director's decision on September 19, 2003. The applicant states that he received the request for additional evidence and his employment authorization document at almost the same time and thought that since he had his employment authorization card it would not be necessary to send additional evidence. The applicant also states that he took advice from people who were not knowledgeable about these matters. The applicant also provides additional documentation in support of his claim.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, as the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the applicant previously submitted a notice from the TSC dated November 29, 2002, stating that he previously submitted an application for TPS, and indicated that this was an application for re-registration, and not his first application. However, the record, as currently constituted, fails to support his assertion. Any additional evidence that the applicant has regarding this assertion, or of any other record with CIS, should be submitted to the director of the TSC.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.